

**SANITIZED DEC. 04-309 P – BY GEORGE V. PIPER --SUBMITTED FOR  
DECISION ON 07/28/04 – ISSUED 07/30/04**

**SYNOPSIS**

**PERSONAL INCOME TAX – BURDEN OF PROOF NOT MET** – Having refused to present relevant evidence to the contrary, Petitioner, who has held and presently holds a West Virginia driver's license listing a West Virginia address and from which a petition for reassessment was mailed, and who supports a wife and children in this State, and whose employer withholds West Virginia personal income tax from his salary, is considered domiciled in and to be a resident of the State of West Virginia for West Virginia personal income tax purposes as set forth in W. Va. Code § 11-21-7(a)(1).

**FINAL DECISION**

On March 11, 2004, the Compliance Division of the West Virginia State Tax Commissioner's Office issued a West Virginia personal income tax assessment against the Petitioner. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the years 1999, 2000, 2001, and 2002 for tax, interest, through March 11, 2004, and additions to tax, for a total assessed liability.

Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked May 3, 2004, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code § 11-10A-8(1) [2002].

Subsequently, notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and 121 C.S.R. 1, § 61.3.3 (Apr. 20, 2003).

### **FINDINGS OF FACT**

1. The petition for reassessment contained affidavits from both Petitioner's mother and from his estranged wife asserting that Petitioner had not been a resident of West Virginia since 1996 when he left the state to go out-of-state to find work; that the West Virginia address listed in his West Virginia Motor Vehicle operator's license is only used to receive mail; that when the Petitioner is not on the road (Petitioner is a long-haul trucker), he resides out-of-state; and that Petitioner visits his children twice a year at the West Virginia address.

2. Petitioner's renewed West Virginia commercial driver's license issued on March 27, 2000 lists his address as West Virginia. Petitioner also admits that he held the same West Virginia driver's license from 1996 to 2000.

3. Petitioner was recently the subject of a federal tax audit wherein he was assessed an additional amount in income, as well as miscellaneous late filing penalties, which are both the subject of levy and collection.

4. Petitioner's assessment was prompted by the fact that his present employer has been withholding West Virginia personal income tax from his salary based upon Petitioner presently having a West Virginia driver's license.

5. Petitioner admits that his wife and children, whom he financially supports, all live in the State of West Virginia and that he makes visits to West Virginia to see them.

6. At the hearing Petitioner repeatedly refused to comply with the orders of the tribunal in that: (a) he made outrageous claims that he was no longer a citizen of the United States of America and demanded that paperwork in support of that claim be admitted into evidence, although the same had previously been ruled as irrelevant and inadmissible; (b) refused to present any relevant evidence on his behalf, although directed to do so by the tribunal on numerous occasions; (c) challenged the jurisdiction of the tribunal to hear the case and even went so far as to threaten the administrative law judge with a “writ of usurpation of power” because the ALJ allegedly was a “usurper.”

## **DISCUSSION**

The only issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part, as required by W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

In this case, Petitioner’s affidavits have no real force and effect because evidence in the record clearly shows that Petitioner is a resident of the State of West Virginia. His only driver’s license is a renewed West Virginia commercial driver’s license which lists his address as West Virginia. Even more importantly, Petitioner’s petition for

reassessment was mailed from that same West Virginia address, and Petitioner ultimately testified that his mother signed his name and prepared same with his permission.

The record also reflects that Petitioner's estranged wife and children, whom he financially supports and visits, live in the State of West Virginia and that Petitioner has held one or more West Virginia driver's licenses since at least 1996 when he claimed that he left West Virginia for good.

Accordingly, it is Determined that for West Virginia personal income tax purposes the Petitioner is considered domiciled in and to be a resident of the State of West Virginia pursuant to W. Va. Code § 11-21-7(a)(1).

## **CONCLUSIONS OF LAW**

Based upon all of the above it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment the burden of proof is upon a petitioner-taxpayer, to show that the assessment is incorrect and contrary to law, in whole or in part. *See* W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to his contention that he is not domiciled in and a resident of the State of West Virginia for West Virginia personal income tax purposes. *See* 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

## **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioner for the years 1999, 2000, 2001 and 2002, for tax, interest, and additions to tax, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], **interest accrues** on this personal income tax assessment until this liability is fully paid.